

04-1104-CV-W - FJG

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2.

disclosure of the plaintiff's records and unlawful denial of visa to the plaintiff's fiancée.

3. Defendant USDOS is a foreign affairs department of the executive branch of the United States and employs the defendant Everitt.

4. This Court has jurisdiction over this Complaint pursuant to U.S.C. § 552(g)(1)(D) under Title 5 of the United States Code.

5. Venue is proper in this District pursuant to U.S.C. § 552(g)(1)(D) in that the defendants are subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

1. In early November 2003, through a dating web site friendfinder.com, the plaintiff got acquainted with his present fiancée Olga Zvolinscaia, a 25 year old final-year medical student living in Chisinau, Moldova, whom he traveled to meet for the very first time in early January 2004 and then again in early February 2004 in Chisinau. Only one visit is required for fiancée visa.

2. Plaintiff filed an I-129F or petition for K-1 fiancée visa for her, the receipt date for which at the U.S. Citizenship & Immigration Services (USCIS) is 2/5/04. Aside from fee and other required evidence, the plaintiff submitted the original

boarding passes, original hotel receipt, a photo and an email as proof of relationship.

3. Petition was approved by the USCIS Nebraska Service Center at Lincoln on 5/28/04, and forwarded to the National Visa Center (NVC) at Portsmouth, New Hampshire, a branch of the defendant USDOS, which approved it on 6/25/04 and forwarded it to the defendant. Choice of the Embassy was made by the NVC, and it was a poor choice for the plaintiff in that his name and place of birth stood out there.

4. Embassy's instruction sheet does ask to bring in proof of relationship but does not specify the exact nature or quantity of evidence. At her interview on 9/1/04, Ms. Zvolinscaia showed 2 photos and 5 emails; a non-refundable air ticket, 2 post cards and FedEx envelop the plaintiff had mailed to her.

5. Plaintiff learnt through Ms. Zvolinscaia's email on eve of 9/2/04 that she had been denied a visa. Attached to her email was a digitized copy of the USDOS Optional Form 194, which stated "no proof of relationship" as reason for visa denial and signed by the defendant Everitt.

6. When on 9/3/04, the plaintiff attempted to reach the defendant Everitt, she hung up on him as soon as he identified himself.

7. Through a phone conversation over that weekend, Ms.

Zvolinscaia confronted the plaintiff over the defendant Everitt's revelations that he had been divorced four times and had had his name changed.

8. Plaintiff is divorced four times, twice from the same wife, and changed only his first name once. To date, no one else has understood the relevance, significance or necessity of disclosure of the first name change that took place 2 ½ years before the plaintiff came to know Ms. Zvolinscaia. Perhaps visa denial based solely on nondisclosure of all divorces looks bad.

9. In 2002, the U.S. Census Bureau reported the U.S. divorce rate to be around 50%. Plaintiff's four divorces, thus, are as American as the apple pie.

10. After the Labor Day, the plaintiff reached James Theis, then Acting Consul General, who told him that: (a) only 1 in 20 (5%) fiancée visas ever get denied, (b) according to the defendant Everitt, Ms. Zvolinscaia wasn't very convincing, (c) plaintiff's case is still pending in that it was returned to the NVC on 9/3/04 with recommendation that the USCIS consider revoking the petition because the defendant Everitt wasn't convinced of their relationship, the NVC would return the case to the USCIS, which would contact Plaintiff for any additional proof of relationship, and if the USCIS is then convinced of the relationship, they would resubmit case back to the NVC which would resubmit it to the Consular Section which would recall Ms.

Zvolinscaia for another interview, (d) any additional proof of relationship need not be directed to the Consular Section because they had done their part, and (e) case couldn't be recalled from the NVC. On 11/15/04, Mr. Theis changed his last statement to: "At this time, we see no reason to recall the case."

11. Considering it took the case seven (7) months going from the USCIS to the Embassy in the first run, one can safely assume that the insane process, even if favorable for the plaintiff, could take another 1½ years. Commonly, such is simply referred to as 'giving one a hard time'. It is obvious that most modern non-marital relationships wouldn't survive such a prolonged separation.

12. Against all odds with the defendant Everitt who saw an air ticket only two days prior to the Labor Day weekend, and still denied the visa for superficial reasons, the plaintiff put up an effort by pleading to the Consular Section through all three (3) of his Congresspersons on grounds of: (a) Holiday Season A.K.A. 'the Season of Giving', (b) mutual depression, (c) Ms. Zvolinscaia in a situation of domestic violence, (d) plaintiff without any relations in the U.S., (e) the disclosure of the plaintiff's beta thalassemia (an inherited anemia) was tough enough of a revelation for Ms. Zvolinscaia, and (f) plaintiff would have voluntarily disclosed all of his divorces

to Ms. Zvolinscaia at the right moment after she got to the U.S. and before their proposed marriage.

13. U.S. Senator James M. Talent's office required proof of relationship before proceeding, and wrote to the Consular Section only after they were satisfied by the proof of relationship provided by the plaintiff, which they forwarded to the Consular Section.

14. Plaintiff also contacted the Visa Office (VO) at the USDOS in Washington, DC, who told him that: (a) defendant USDOS isn't going to overturn the decision, (b) defendant USDOS exercises no control over the embassies for each embassy has an ambassador who has sole control over his or her embassy, (c) plaintiff is welcomed to mail them his complaint against the defendant Everitt and any additional proof of relationship but all they would do is forward it to the Consular Section and may even read it, and (d) plaintiff's case showed only "security clearance" for status in their computer and the only person who would know what that was about would be the defendant Everitt.

15. Plaintiff again attempted to reach the defendant Everitt but as soon as he identified himself, she threatened to notify the security if he were to ever call the Embassy again.

16. Plaintiff then wrote to the U.S. Ambassador in Romania, Dr. Jack Dyer Crouch II, with proof of relationship. Ambassador's office admits receipt of the mail but say they

forwarded it down to the Consular Section for they are prohibited by law to intervene in visa cases.

17. Carelessness, disorganization, and/ or malice, of the Consular Section can be judged by the fact that an email inquiry into the plaintiff's case from the U.S. Representative Karen McCarthy's office on 9/8/04 wasn't replied to until 10/21/04.

18. Reply by Bryan W. Dalton, Consul General, listed instead the plaintiff's nondisclosure to Ms. Zvolinscaia of all his divorces and his name change as reasons for visa denial, something that at least two of the three Congresspersons were already aware of, not as a reason for the visa denial, but as the plaintiff's outrage over the disclosure of his records to Ms. Zvolinscaia by the defendant Everitt.

19. Plaintiff alleges that since by then enough proof of relationship had passed before the Consular Section through: (a) Senator Talent's office, (b) the VO and/ or (c) the Ambassador's office that they had to cook up a different reason for the visa denial.

20. A phone call to the Ambassador's office on 11/12/04 was instead answered by Mr. Theis, who affirmed that: (a) nondisclosure of all of the plaintiff's divorces and name change was so great of a sin that no weight of proof of relationship could wash it off, (b) he was aware of disclosure of the plaintiff's records to Ms. Zvolinscaia by the defendant Everitt,

(c) he would look into why the Congressional inquiries to the NVC have failed to locate the case there, and (d) plaintiff should instead divert his efforts to the NVC and USCIS, where his case at present is.

21. NVC's own web site states: "NVC has no authority to review the granting or refusal of any immigrant or lottery visa case. If you want to have more information about the processing of an immigrant visa case that has already been sent to a U.S. consular section abroad or to request a review of a visa refusal, please contact the U.S. consular office where the visa case was processed."

22. A subsequent phone call to Mr. Dalton on 11/15/04 was instead answered by Mr. Theis, who told the plaintiff that an email inquiry to and from the NVC confirmed that the NVC wasn't in receipt of the case and that the case would be resubmitted to the NVC, thus delaying the process further by 2 ½ months. As to the plaintiff's intent to file a lawsuit, Mr. Theis said that he could do whatever he wanted to.

23. Plaintiff consulted an immigration attorney who advised getting married and reapplying. But since the defendant Everitt's disclosure to Ms. Zvolinscaia of the plaintiff's four divorces, she insists on living together as a couple for a few months under normal circumstances before deciding on marriage, something that is possible through fiancée visa only.

24. Any appeal process, if it exists, is not known to the plaintiff for there was none mentioned at the interview, none stated on the Form 194 and none conveyed to the plaintiff in any form of communication with anyone. It is ironic that the decision of this Court is subject to an appeal but the decision of a window clerk at a U.S. mission is virtually unchallengeable.

25. On one hand, the defendant USDOS grants the U.S. permanent resident status at random to 50,000 foreign applicants a year under Diversity Visa (DV) lottery program at \$40 per green card, while on the other hand, denies visas on petitions filed by the U.S. taxpayers, and approved by both the USCIS and NVC, presumably to restrict immigration.

26. In 2002, the plaintiff's twice divorced white Christian American friend brought his fiancée from Philippines without even going through an interview as both submitted the required document at the consulate window, were asked to return after two days when a visa was placed in her passport.

27. Plaintiff has had more than his fair share of denials when it comes to jobs and dates during the twenty years he's lived in the U.S., but unlike employers and women who don't owe him a thing, the government does, or there wouldn't be a difference between his gross and net pay.

COUNT I

UNLAW DISCLOSURE, 5 U.S.C. § 552(g)(1)(D)

28. Plaintiff states and realleges the allegations of paragraphs 7, 19 and 22 of this Complaint as if fully set forth herein.

29. Not only did the defendant disclose the plaintiff's information, she did so in a manner as to exaggerate the facts.

30. Defendant Everitt's actions have adversely affected the plaintiff's relationship.

31. Defendant Everitt's actions also constitute a criminal misdemeanor pursuant to U.S.C. § 552(h)(1) under Title 5 of the United States Code.

COUNT II

UNLAWFUL DENIAL OF FIANCEE VISA

32. Plaintiff restates and realleges the allegations of paragraph 4, 5 and 9 of this Complaint as if fully set forth herein.

33. The defendant Everitt exercised option FAM § 41.81(K)(N6.6), which states: "If a consular officer finds that the fiancé(e) or marital relationship is not bona fide but is a sham entered into solely for immigration benefits, post should return the K-1 or K-3 petition to the approving INS office under cover of a memorandum detailing the specific, objective facts giving rise to the post's conclusion."

34. Would a reasonable person conclude that a relationship is "a sham entered into solely for immigration benefits" because Ms. Zvolinscaia did not know a thing or two about the plaintiff, giving it 100% of the weight, and ignoring any and all of the rest of the proof of relationship, such as two meetings, over a hundred emails, money wires, phone calls totaling to about \$2,000?

35. As per FAM § 41.81(K) (N6.6), denying of visa for nondisclosure of prior marriage(s), even if annulled by divorce or death, applies specifically only to the immigrant and not to the petitioner, and even then, only if petitioner does not wish to proceed with the proposed marriage with this knowledge.

36. Defendant Everitt concluded the meeting with Ms. Zvolinscaia by denying her a visa and commenting: "May be you love this man but you don't know him well." How does one return a petition under pretext of a sham relationship while uttering such remarks, and later yet, claim that Ms. Zvolinscaia wasn't very convincing?

37. An immigration assistance web site, Visa Pro states: "...their true intent in doing so is not to deny the fiancée visa but only to drag out the process long enough before one or both of you give up", which also points towards an intent of breaking up an undesirable relationship.

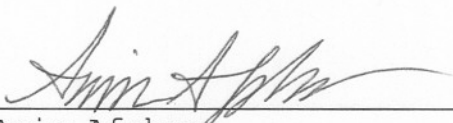
38. If the defendant wasn't convinced of the

relationship, after seven months of wait, the plaintiff deserved at least an opportunity to present additional proof of relationship, but visa was denied four hours after the interview despite the two having met each and every material requirement.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for a decision against the defendants under U.S.C. § 552(g)(1)(D)(A) and U.S.C. § 552(g)(1)(D)(B) for all damages sustained, an injunction in favor of the fiancée visa, cost of this action, and any other relief as the Court may deem appropriate in the circumstances.

Respectfully Submitted,



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State of Missouri)
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County of Jackson)

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MARY SIMKINS
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires July 21, 2007

I, Amir Afshar, being first duly sworn under oath, present that I'm the plaintiff in this action, I know the contents of the complaint, and that the information contained herein is true to the best of my knowledge and belief.



Plaintiff

SUBSCRIBED AND SWORN To before me this 24th day of November, 2004.



Notary Public